IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 380 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRA VERSHI SHAH

Versus

M G JOSHI

Appearance:

MR KJ SHETHNA for Petitioner

MR MUKESH R SHAH for Respondent No. 1

MR KC SHAH, APP. for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 05/09/2000

ORAL JUDGEMENT

This revision is directed against an order dated 6th May 1997 of Additional Sessions Judge, Junagadh, reversing the order of the Chief Judicial Magistrate,

Junagadh, dropping the proceedings against the revisionist and other accused who were being prosecuted under the Customs Act.

2 On a complaint filed by the custom authorities 17 persons were to be prosecuted. Proceedings in complaint case were adopted by the learned Chief Judicial Magistrate. Statements u/s 200 and 202 of Cr.P.C. were recorded. At the state of Section 244 of Cr.P.C., the prosecution has examined all the witnesses and it did not propose to examine any other witness beyond last prosecution witness, Akbar Ismail Malik. At that stage application was given by the revisionist that the sanction for prosecution granted by the competent authority is invalid sanction in the eyes of law inasmuch as it is the result of non application of mind and that the entire material placed before the authority was not considered and examined. Such routine sanction was challenged on behalf of the revisionist. It was also challenged that there is no prima facie material against the revisionist to frame charges against him.

3 The Chief Judicial Magistrate considered detailed arguments from the two sides and in a lengthy order running into 65 pages concluded that the sanction accorded by the sanctioning authority, namely, the Collector of Customs, Ahmedabad, is illegal and void ab initio. Consequently, he refused to take cognizance of the case and dropped the proceedings against all the 17 accused and they were ordered to be released. Bail bonds submitted by them were cancelled.

4 Feeling aggrieved from this order of the Chief Judicial Magistrate, Junagadh, passed on 3.3.1990, the Superintendent of Customs preferred revision before the Sessions Judge, Junagadh. The Sessions Judge, Junagadh, by his order dated 6th May 1997 observed that the approach of the learned Chief Judicial Magistrate was erroneous, contrary to law and that the sanction was a legal and valid sanction. Making certain observations against the Cheif Judicial Magistrate, the learned Additional Sessions Judge allowed the revision and set aside the order of the Chief Judicial Magistrate. Hence this revision.

5 I have heard Shri K.J. Shethna, learned counsel for the revisionist, Shri M.R. Shah, learned counsel for the respondent no.1, and Shri K.C. Shah, learned APP for the respondent no.2 - State.

6 It may be mentioned that all the 17 accused were

discharged by the Chief Judicial Magistrate but the order of discharge against all of them was set aside under the impugned order. But except the revisionist who was accused no.3 before the Chief Judicial Magistrate, no other accused has preferred revision against the impugned order. On these facts, Shri M.R. Shah, learned counsel for respondent no.1 contended that since no revision has been preferred by the remaining 16 accused, the order of the learned Additional Sesions Judge against them cannot be quashed and set aside. In reply to these arguments, Shri Shethna, learned counsel for the revisionist, has referred to the Apex Court's pronouncement in the case of PRANAB KUMAR MITRA V. STATE OF WEST BENGAL reported in AIR 1959 SC 144 and has contended that the High Court can examine the legality and propriety of the order as a whole and if the order as a whole passed by the Chief Judicial Magistrate is likely to be restored or is restored then there is no reason why the accused who have not preferred revision against the order of the learned Additional Sessions Judge could not be granted the benefit of that order. The facts in this case were altogether different. Revision was filed by the convict prisoner. He died during the proceedings of the revision. The Apex Court held that there is no abatement of the revision consequent upon the death of the revisionist and once the record has been summoned by the High Court, it has to examine the validity, legality and propriety of the order of conviction as well as of the order on sentence. The question in the case before me is whether the impugned order of the learned Sessions Judge can be set aside as a whole and the order of the Chief Judicial Magistrate can be restored as a whole or that the order of the Chief Judicial Magistrate can be set aside only against the revisionist. That exercise will be done in the subsequent portion of this judgement.

7 Shri M.R. Shah, learned counsel for the respondent no.1, has contended that the revisionist has no right to challenge the sanction at any stage of the proceedings. However, this contention does not appear to be acceptable in accordance with law. Sanction for prosecution of the offenders by the Custom Authorities is required under Section 137 of the Customs Act which provides that no Court shall take cognizance of any offence under Section 132, Section 133, Section 134 or Section 135 except with the previous sanction of the Commissioner of Customs. In this case the Commissioner of Customs granted sanction on 1.7.1985 whereas the prosecution was launched shortly thereafter in the year 1985 itself. Application for dropping the proceedings by the revisionist was moved before the Chief Judicial

Magistrate on 25.01.1990. Of course, there was about 5 years dely in moving this application but this could not be done at the stage under Section 244 of the Cr.P.C. inasmuch as the stage of framing of charge under Section 246 of the Cr.P.C. had not yet arisen. Consequently, on grounds of delay the application of the revisionist could not be rejected by the Chief Judicial Magistrate, Junagadh.

8 Shri K.J. Shethna, learned counsel for the revisionist, has contended that the sanction granted by the Commissioner or Collector of Customs is invalid and it apperas that only draft sanction was placed before the authority and it was signed by the authority. From the impugned order it appears that the sanction order ran in six pages and the details were mentioned by the sanctioning authority as to what material was considered by him and sanction to prosecute how many accused was granted. It is not a case where routine sanction was granted by filling in blank spaces in typed pro forma for sanction. The question whether the sanctioning authority applied its mind to the material on record or not is to be gathered from the sanction itself. The Additional Sessions Judge has mentioned that all the materials were placed before the sanctioning authoritiy as they were available at that time and each and every detail appears to have been considered. In para 7 of the impugned order the learned Additional Sessions Judge has observed that it contains all the ingredients of a valid sanction. He perused the sanction and found that entire material, was placed before the sanctioning authority, which constituted the offence and each and every paper appears to have been examined by the concerned authority who satisfied himself about the commission of the offence. On these findings the learned Additional Sessions Judge did not find any illegality in granting the sanction. What is required by the sanctioning authority is that it must consider all the materials placed before him before granting sanction. The sanctioning authority like the Court of law is not required to write a detailed judgement with reasons. If from the material on record he was prima facie satisfied that certain offences were committed by certain accused and the material was sufficient for proceeding against such accused, he could have justifiably granted sanction for their prosecution. That seems to have been done in the instant case.

9 Shri K.J. Shethna has however challenged the sanction on other ground that there was controversy regarding the name and identity of one of the accused and this controversy was in this way whether his name is

Praful Keshavji Thakkar or Praful B Shah or Praful Babulal Shah. There is discrepancy about the name of only one accused and there is no dispute about his identity. It is a matter to be decided on evidence whether the name of the said accused is Praful Keshavji Thakkar or Praful B Shah or Praful Babulal Shah. It may also be mentioned at this stage that the said accused has not filed any revision against the impugned order. Consequently, this dispute about the identity of one of the accused or about the difference in the name of such accused will not ennure to the benefit of the revisionist nor can it be said that on this ground alone the sanction has been rendered invalid or is the result of non application of mind by the sanctioning authority. The sanctioning authority while granting such sanction had no dispute before him regarding the three names of one of the accused viz. Praful Keshavji Thakkar or Praful B Shah or Praful Babulal Shah. Consequently, at that stage while granting the sanction without dispute to the correctness of the name the sanctioning authoirty had no reason to investigate as to what was the correct name of this accused. As such on this ground also the entire sanction cannot be said to be illegal or invalid.

10 The Chief Judicial Magistrate in his order has considered the role assigned to the revisionist Mahendra Vershi Shah and came to the conclusion that his role is not free from doubt. However, the sanctioning authority cannot be blamed for this because at that stage the evidence which was brought before the Chief Judicial Magistrate was not beforee him. Moreover, it is premature to say that no role was played by the revisionist. If the sanctioning authority found that prima facie the offence was committed by the revisionist, he was justified in granting the sanction for prosecution against him. An alternative assumption arrived at by the learned Additional Sessions Judge that even if for the sake of argument the sanction against the revision is vague, the sanction against him only may be illegal and not for all other accused cannot be said to be conclusive rather it is an observation based on assumptions and not clear finding that the sanction against the revisionist is certainly vague hence invalid.

11 Shri K.J. Shethna has argued that validity of the sanction can be challenged at any stage and for this he has referred to Supreme Court decision in B.SAHA & ORS. V. M.S. KOCHAR reported in AIR 1979 SC 1841 and in the case of SURESH KUMAR JAIN V. PANDEY & ORS. reported in 1998(1) SCC 205. These were the cases where the sanction for prosecution u/s 197 of the Cr.P.C. was

being examined. The Apex Court in Sahu's case (supra) observed that the question of sanction u/s 197 can be raised and considered at any stage of the proceedings. In considering the question whether or not the sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegations made in the complaint. It can take into account all the materials on record at the time when the question is raised and calls for consideration.

12 Similar view was taken in Suresh Kumar Jain's case (supra) where also the Supreme Court held that the question of sanction for prosecution can be raised at any stage of the proceedings and the accused are not required to wait till the framing of the charges or examination of prosecution witnesses. It was also laid down in this case that the accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof to show that the acts were committed in discharge of public duties attracting Section 197 of Cr.P.C.

13 These two verdicts of the Apex Court therefore leave no room for accepting the contention of Shri M.R. Shah that the objection to the validity of the sanction was raised at a belated stage.

14 Shri K.J. Shethna next contended that in detention cases if the entire material is not produced before the detaining authority and is not considered by such authority, the order of detention becomes illegal and is liable to be quashed. However, that analogy cannot be applied to the cases where sanction is being accorded by the sanctioning authority. What is required to be done by the sanctioning authority is to consider whatever material placed before him and to pass an order whether the accused should be prosecuted or not. It is not a case where like detention order the sanction will become illegal and invalid if the entire material is not placed before the sanctioning authoirty. Consequently, on this contention the sanction granted by the competent authority cannot be set aside nor it can be held to be illegal and invalid.

15 In Union of India v. Ashok Chauhan reported in 1991 Cr.L.J. 2359 it has been held that the satisfaction that has to be entertained by the Court regarding the existence of a valid sanction must be on the basis of the materials placed before it by the prosecution. That can be done in two ways, firstly, by production of proof of original sanction which itself contains the facts

constituting the offence as well as the grounds of satisfaction and secondly by adducing the evidence to show that full facts were placed before the sanctioning authority upon which satisfaction was arrived at by it. It has been further held that if the order sanctioning the prosecution itself shows that the sanction was accorded after considering the material on record placed before the authority, in that case, it cannot be said that the sanction was not granted after application of mind to the material placed before the authority. In my opinion, these safeguards were taken into consideration by the sanctioning authority who considered all the materials placed before it.

16 As observed earlier, it is not a case where routine sanction was granted by filling in blank spaces in typed pro forma for sanction.

17 The consideration in detention cases like COFEPOSA as mentioned by the learned Chief Judicial Magistrate will not apply for grant of sanction u/s 137 fo the Customs Act. The sanction exh.4 was found by the Additional Sessions Judge to be self-contained , reasoned and in the nature of speaking order. If on these facts the sanction was to be held to be valid sanction u/s 137 of the Customs Act, there remains little scope for interference with the impugned order.

18 In the result the impugned order cannot be disturbed in this revision. If this is so, then no occasion arises for separating the order of sanction against the revisionist vis-a-vis the other accused nor it can be said that the said accused are entitled to any benefit under the orders of the Chief Judicial Magistrate.

For the reasons stated above, no merit is found in this revision which is hereby dismissed.

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